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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Wendy Poss et al.

Serial Number: 10/688,490

Art Unit: 3643

Filed: October 16, 2003

Examiner: S. T. Nguyen

For: Pet Bed having Orthopedic Properties

Remarks

Claims 1-19 remain in the application. A new claim 20 has been added. Claims 1-19 stand rejected. Claim 3 and 8 are objected to. Claims 1, 3, and 8 have been amended. Bases for these amendments are as follows. Claim 1 has been amended to indicate that the side arms and flat bottom are fixed together as one piece. This is clearly shown and described in the specification. Claims 3 and 8 have been amended to correct minor typographical errors. The new claim 20 further defines the sculpted area as a comfort zone as described on page 4, lines 15-17 of the specification. No new matter has been added.

The Rejections and Objections

Claims 3 and 8 are objected to because of the following informalities: In claim 3, the claim depends upon itself. In claim 8, a period should be used at the end of the claim and not a semicolon.

The examiner has rejected claims 1, 9, 11-15 under 35 U.S.C. 103(a) as being unpatentable over US 6079067 (herein 067) in view of US 4631766 (herein 766).

The examiner has rejected claims 2 and 3 under 35 U.S.C. 103(a) as being unpatentable over 067 as modified by 766 as applied to claim 1 above, and further in view of US 6026527 (herein 527).

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The examiner has rejected claims 4-6,10 under 35 U.S.C. 103(a) as being unpatentable over 067 as modified by 766 as applied to claim 1 above, and further in view of US 5136981 (herein 981).

The examiner has rejected claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over 067 as modified by 766 and 981 as applied to claims 1 above; and further in view of US 6256822 (herein 822).

The examiner has rejected claims 16-19 under 35 U.S.C. 103(a) as being unpatentable over 067 as modified by 766 as applied to claim 1 above, and further in view of US 6196156 (herein 156).

Response

The applicant believes that all of the rejections and objections have been resolved. Regarding the objections to claims 3 and 8, these claims have been amended to remove the typographical errors. Thus, these objections have been removed.

Regarding the rejections of claims 1, 9,11 and 15 under 35 U.S.C. 103(a) as being unpatentable over US 6079067 (herein 067) in view of US 4631766 (herein 766), the examiner argues that the 067 patent contains everything in the claims except for the curved recess portions in the arms, which the examiner concluded would have been obvious in view of the teachings of the 766 patent.

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Here, the examiner is engaging in classic hindsight reconstruction. To make a *prima facie* showing of obviousness, it has long been held that the combination must be suggested in the references themselves. Moreover, there must be some motivation for making such a combination found within the references—and not just because the reference supplies the “missing pieces of the puzzle”. Applicants argue that the combination made by the examiner would be obvious only with knowledge of the instant invention, which constitutes improper hindsight reconstruction.

Examining the references in more detail, applicants note that the 067 patent *does not* teach the basic elements of the claims. Claim 1, as amended, now clearly indicates that the flat base, back and side arms are integrally formed, however, the 067 patent has three separate parts: the formed top, the base section and a removable pad 18. The removable pad 18 is an important element. The examiner says that this pad forms the flat center section. In fact, the pad 18 is *not* flat, but sloped. See, 067, figs. 3 and 5. Moreover, in col. 3, lines 25-30, the 067 patent states that the pad is wedge-shaped to “prevent the infant from falling forward”. Clearly, this support device is designed to support a sitting or reclining baby in a totally different manner than would be needed for a pet bed. In a pet bed, a wedge-shaped bottom to prevent a pet from “falling forward” would not make any sense and would prove uncomfortable for the pet.

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Moreover, in the 067 patent, this pad is removable and is not fixed, as is the base in the instant invention.

Beyond these differences, the 067 patent lacks the curved recess portions in the arms. These are used to allow a pet to rest its head or paws in a comfortable manner. The examiner concedes that these portions are not included in the 067 patent. The examiner then adds that the 766 patent "teaches a bed having side arms (where refs. 44,10,20,48,16 are pointing at) with curved recessed portion 48 to support arms of a user of the bed". However, the 766 patent teaches an infant seat for neonatal infants. It explains how these infants have not fully developed, and can be injured by position-induced deformities. Thus, the entire bed is formed to support such infants in a completely different manner than that of the 067 patent, which is ostensibly used by fully developed infants. The fact that the 766 patent has curved areas to support the arms of the infant as part of an overall form, does not readily translate into putting curved recess on the 067 patent. It is only the teaching of the instant invention, which uses curved portions to help comfort an animal that the examiner finds motivation for making the combination.

Finally, in looking at the curved arm portions of the instant invention, it is difficult to see how adding them to the 067 would make that device more comfortable for a baby. The sloped arms of the 067 device work well with an infant sitting in the

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device. There does not seem to be any practical way for a human infant to use curved arms incorporated into the 067 patent. The 766 patent incorporates an entire body form that is totally different in design and scope from the 067 patent. In the 766 patent, the curved arms are part of a continuous, sculpted body support. They merge and blend right into the main body section of the device. There does not seem to be any logical reason to put the curved arms into the 067 patent based on the teachings of the two references. It is only with the knowledge of the instant invention that such a combination would even be conceivable.

Accordingly, for the reasons listed above, applicants believe that the examiner has failed to make a *prima facie* showing of obviousness as to these claims. Applicants believe therefore that these rejections have been traversed.

Regarding the rejections of the remaining claims, applicants believe that because the base rejections—those based on the 067 and 766 patents have been traversed, all of the remaining rejections that rely on them are also invalid. Applicants concede that molding a bed, making it of foam and covering it with vinyl are not *in themselves* patentable features. However, when combined with the features discussed above, they do provide an invention that is novel and not obvious over the prior art.

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Finally, regarding the new claim 20, applicants note that the decorative features found in the references cited do not teach a comfort zone as described in the claim. Therefore, applicants believe that this claim is also allowable.

Conclusion

In view of the above, the applicant believes that all of the objections and rejections have been resolved. Reexamination, reconsideration and approval of the claims, as amended, are requested soon.

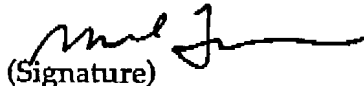
Respectfully Submitted



Michael Tavella
Registration No. 29,351
2051 Brigadier Dr.
Anchorage, Alaska 99507
(907)349-2495

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